

THE FINANCIAL SERVICES ROUNDTABLE



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March 31, 2000

Ms. Jennifer J. Johnson
Secretary
Board of Governors of
the Federal Reserve System
20th and C Streets, NW
Washington, D.C. 20551
Docket No. R-1058

Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
Gramm-Leach-Bliley Act Privacy Rule,
16 CFR Part 313—Comment

Manager, Dissemination Branch
Information Management & Services
Division
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552
Docket No. 2000-13

Mr. Robert E. Feldman
Executive Secretary
Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20429

Communications Division
Office of the Comptroller of the Currency
250 E Street, SW
Washington, D.C. 20219
Docket No. 00-05

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 5th Street, NW
Washington, D.C. 20549-0609
File No. S7-6-00

Dear Sirs and Madams:

The Financial Services Roundtable appreciates the opportunity to comment to the Board of Governors of the Federal Reserve System, the Federal Trade Commission, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision and the Securities and Exchange Commission (collectively, “the agencies”) on the proposed privacy regulations authorized and required under Title V of the Gramm-Leach-Bliley Act (“the financial modernization act”) adopted on November 12, 1999. The Roundtable congratulates and thanks the agencies for their efforts to complete these regulations in a prompt and appropriate manner.

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The Financial Services Roundtable is a national association whose membership is reserved for 100 companies selected from the nation's 150 largest integrated financial services firms. The member companies of the Roundtable engage in a wide range of financial activities, including banking, securities, insurance, and other financial service activities. The mission of the Roundtable is to unify the leadership of large, integrated financial service companies in pursuit of three primary objectives:

- To be the premier forum in which leaders of the United States financial services industry determine and influence the most critical public policy issues that shape a vibrant, competitive marketplace and a growing national economy;
- To promote the interests of member companies in federal legislative, regulatory, and judicial forums; and
- To effectively communicate the benefits of competitive and integrated financial services to the American public.

The Roundtable is a CEO-driven association that advocates the interests of integrated financial institutions primarily in the Congress, the federal agencies, and federal courts.

GENERAL COMMENTS

Roundtable member companies have long been leaders in protecting the security, confidentiality and privacy of customer information. Customers rely on this and expect this standard of service. All Roundtable members recognize that maintaining the trust of their customers, and the public generally, is crucial both to the success of their companies and the entire financial services industry.

The proposed rules generally implement the provisions in the financial modernization act in a manner faithful to the intent of the Congress. The following comments are intended to ensure the regulations more accurately reflect the intent of the financial modernization act and serve consumers of financial services well.

Consistency and Uniformity Among Agencies The Roundtable is encouraged by, and supportive of, the degree to which the all of the regulatory agencies have worked together to fashion draft regulations that are generally consistent with one another. To the extent that differences exist in the draft regulations, the Roundtable supports further efforts to harmonize the final rules. Such uniformity is consistent with the standard in Section 504(a)(2) of the financial modernization act which requires the agencies to assure "that the regulations prescribed by each agency and authority are consistent and comparable with the regulations prescribed by the other such agencies and authorities." Moreover, such

consistency is important so that customers of financial service providers that engage in businesses through multiple subsidiaries subject to multiple regulators are provided with consistent and comprehensible privacy protections.

Consistency and Uniformity Among Delivery Channels Additionally, the Roundtable encourages the agencies to ensure that the final regulations provide uniform treatment for financial products and services offered through different distribution channels. For example, the final regulations should not require different standards for on-line products or services than those that are offered and purchased in person, through the mail or through other delivery systems.

Consistency and Uniformity Among Industries Equally importantly, the Roundtable strongly urges that final regulation provides for equal treatment between traditional financial services firms as compared to nontraditional providers. For example, the final regulations should not create loopholes that would subject on-line “aggregators” of financial information or bill payment services to different standards than those for other financial services providers.

Model Forms The Roundtable strongly urges the agencies to adopt model forms for both the initial and annual notices that are required by the financial modernization act and proposed regulations. Many Roundtable members believe that the proposed regulations require financial institutions to develop privacy notices that include an immense amount of detailed information. One Roundtable member company has suggested that if the proposed rules are adopted without change, the privacy disclosure may exceed twenty pages. While many institutions have not yet attempted to draft such a disclosure, virtually every Roundtable member agrees that the proposed rules will require extensive disclosures.

The Roundtable does not believe that the agencies intended to require such lengthy and potentially unworkable disclosures. Developing model disclosures in the final regulations will illustrate the agencies’ intent and provide more comprehensive guidance for financial institutions. Consumers will benefit if institutions are able to draft privacy notices that better meet consumers needs.

If the agencies adopt model disclosures, the Roundtable suggests that the final rules make clear that institutions must comply only with the regulations and not the model disclosures. However, complying with the model disclosures should provide a safe harbor in cases where the model accurately reflects the policies and practices of the institution.

Safe Harbor Additionally, the Roundtable asks for a safe harbor for institutions that develop and implement reasonable procedures to comply with Title V of the financial modernization act and the implementing regulations. The Roundtable believes that it is important that

inadvertent errors that might occur will not result in regulatory or legal sanctions against financial institutions.

SECTION-BY-SECTION COMMENTS

The following comments respond to specific provisions of the proposed regulations, as well as to the questions put forth by the agencies in their notice of proposed rulemaking. The comments are intended to provide constructive feedback to ensure that the final regulations reflect the intent of the legislation and allow consumers to receive the full range of benefits resulting from passage of the financial modernization act, including the privacy provisions in Title V.

Section .1 Purpose and Scope

The Federal Reserve Board, the FDIC, the OCC and the OTS appear to treat insurance activities differently within this section. Both the FDIC and OTS versions of the proposed regulations specifically exempt both insurance companies and insurance agencies from the scope of the rules. The OCC version exempts insurance companies but does not provide an explicit exemption for insurance agencies. The Federal Reserve Board does not provide an explicit exemption for insurance companies or insurance agencies and in fact, applies the regulations to “state member banks, bank holding companies, and *certain of their nonbank subsidiaries and affiliates...*” (italics added). The Roundtable asks that the OCC and Federal Reserve Board explicitly clarify that their regulations are not intended to apply to insurance companies and insurance agencies since the financial modernization act assigns this authority to state insurance regulators.

The agencies will note that this letter includes several comments that are intended to ensure that the final federal regulations properly reflect certain unique characteristics of insurance activities. These comments are intended to promote consistency in regulation among federal and state regulators and are not intended to address the jurisdiction between such agencies. This is important both to ensure that insurance activities are not subject to dual and potentially conflicting requirements and to promote consistency in regulation as required by the financial modernization act.

Section .2 Rule of Construction

The Roundtable agrees that examples of conduct provide greater clarity to our member institutions as they implement this complex regulation. However, the Roundtable suggests that the agencies resolve outstanding differences in the exact wording of the examples put forth by the agencies. Such uniformity is consistent with the requirements of the financial modernization act.

Section .3 Definitions

Clear and Conspicuous Section 503 of the financial modernization act requires that privacy notices be provided in a “clear and conspicuous” manner. The proposed regulations define the term “clear and conspicuous” to mean “that a notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice.” The agencies also propose several examples to illustrate this definition and provide additional requirements governing this standard. The Roundtable believes that the definition and examples put forth by the agencies are overly detailed and will be confusing to consumers. Adopting the overly restrictive proposed standards will limit the flexibility of financial institutions to develop meaningful and easily understandable notices. Further, the Roundtable believes that the proposed examples potentially contradict each other. For example, complying with Section ___3(b)(2)(F) requires “[a]voiding boilerplate explanations that are imprecise and readily subject to different interpretations” while complying with Section ___3(b)(2)(E) requires “[a]voiding legal and highly technical business terminology.” Even if it were possible to develop notices that are completely free of “legal” terminology, the Roundtable believes that such notices might have some degree of “imprecision” and thus violate Section ___3(b)(2)(F).

The Roundtable suggests that the agencies adopt the “clear and conspicuous” standard included in the Official Staff Commentary for Section 226.5(a)(1) of Regulation Z:

‘The ‘clear and conspicuous’ standard requires that disclosure be in a reasonably understandable form. It does not require that disclosures be segregated from other material or located in a particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size...’.

This “clear and conspicuous” standard in Regulation Z has ensured that consumers receive Truth-in-Lending Act disclosures in a visually appropriate manner. Additionally, legal authorities have provided consumers and financial institutions with additional clarity regarding the Regulation Z definition of this term. Adopting the proposed “clear and conspicuous” standards and examples included in the proposed privacy regulations may have the unintended consequence of confusing, rather than clarifying, legal requirements governing this term.

Consumer The Roundtable is concerned that the proposed definition of consumer is overly broad and may not reflect the nature of who is the actual consumer. To add clarity to this definition, the Roundtable strongly urges the agencies to clarify that the term “consumer” applies only to “retail” consumers. This change is consistent with the intent of Title V of the financial modernization act. In conjunction with this change, the Roundtable asks the agencies to exempt trusts and 401(k) plans from the scope of this regulation. Trusts and

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401(k) plans are legally separate entities that are assigned unique tax identification numbers. In the case of trusts, neither the grantor(s) or the beneficiary(ies) of the trust are customers (or consumers) of the financial institution. Rather, the legal entity (*i.e.*, the trust) is the customer. Likewise, 401(k) plans are not consumers. Further, the sponsors of 401(k) plans explicitly direct the manner in which financial institutions can use nonpublic personal information of plan participants. Exempting such entities from the scope of the legislation will have no adverse effect on the protection afforded to the nonpublic personal information of plan participants.

The Roundtable also suggests that the definition be revised to include the concept that the only persons who should be considered consumers for purposes of these regulations are the individuals who contract for the financial service. For example, the Roundtable strongly believes that an insurance policyholder, and not a policy beneficiary, should be considered a consumer for purposes of these regulations. Under this example, it is unlikely that the financial institution will have any contact with the beneficiary (until such time as a claim is payable). Accordingly, it is appropriate that the definition clarify this important point.

Customer Relationship The agencies define customer relationship to mean “a continuing relationship under which the bank provides one or more financial products or services to the consumer that are to be used primarily for personal, family or household purposes.” The agencies explicitly exempt “isolated transactions” such as ATM withdrawals and cashiers check or money order purchases from this category. The Roundtable supports the definition proposed by the agencies. Including individuals that conduct isolated transactions within the scope of this definition would burden the individuals themselves, potentially raise the costs to noncustomers, and provide no benefits. In fact, covering such individuals within the scope of this definition may require financial institutions that might not otherwise collect information on such persons to do so. This would be inconsistent with the intent of the privacy provisions of the financial modernization act and the proposed regulations.

The Roundtable notes that comments provided above concerning the definition of “consumer” also apply to the definition of customer relationship. Accordingly, the Roundtable asks the agencies to clarify that only the person contracting for the financial service be considered to having established a customer relationship.

Nonpublic Personal Information The agencies propose two possible definitions of nonpublic personal information. The Roundtable suggests the agencies adopt a modified version of Alternative B. Alternative B recognizes that certain information is already in the public domain regardless of the actions of a financial institution. This alternative more accurately defines nonpublic personal information by reasonably and specifically exempting most “publicly available information” from the definition. Alternative A, which suggests that all information is publicly available only if it is obtained from a public source, is overly

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restrictive and does not further consumers' interests since it does not keep any more information "private" than would occur under Alternative B.

Most importantly, the Roundtable believes that the agencies have incorrectly used the term "financial" in this proposed regulation. The interpretation put forth by the agencies in this area contradicts the specific statutory language in Title V, as well as the general overall intent of the Act to modernize the delivery of financial products and services.

A summary of the definition of the phrase "nonpublic personal information" from the financial modernization act is as follows:

509(4)(A) defines nonpublic personal information as both personally identifiable and financial;

509(4)(B) excludes publicly available information from the definition of nonpublic personal financial information; and

509(4)(C) indicates that a list, description or other grouping is only considered nonpublic personal information if it is derived from information that is not publicly available.

However, in Section __.3(n) of the proposed regulations, the agencies propose a definition of that term that does not comport with this statutory language. Rather, the agencies define nonpublic personal information to mean personally identifiable information and personally identifiable information to mean, among other things, "...*any* information provided to a bank to obtain a financial product or service..." (italics added). Using the term "any" in this sense ignores the requirement in Section 509(4)(A) that nonpublic personal information be both personally identifiable and financial.

Next, the agencies define information to be financial "if it is obtained by a financial institution in connection with providing a financial product or service to a consumer." This attempt to define financial by the type of firm that collects the information does not reflect common usage and is not supported by the statutory intent. It seems unlikely that most persons would use the term financial to refer to information such as names, addresses, phone numbers and other similar identifiers. Under such a definition, all information could be considered to be financial. If all information is considered to be financial, it raises questions as to why the statute specifically refers to "financial" information at all. Also, a floor colloquy by Senate Banking Committee Chair Phil Gramm and Senator Wayne Allard argues that "nonpublic personal information" is information that "describes an individual's financial condition." Since an individual's name, address, phone number or other such identifying information does not describe an individual's financial condition, therefore such information should not be considered to be "financial" under the scope of this legislation.

The Roundtable suggests that the definition of “personally identifiable financial information” included in Alternative B be revised to clarify “[t]he fact that an individual is or has been one of the bank’s customers or has obtained a financial product or service from the bank, unless that fact is derived using only publicly available information such as government real estate records or bankruptcy records” is not by itself considered to be “nonpublic personal information.” All personally identifiable information should not be viewed to be nonpublic personal information solely because that information could be used to determine that an individual is a customer of a particular financial institution. Customers regularly use checks, credit cards, and other financial products with the name of their financial provider clearly identified. A strict interpretation of this definition suggests that sending an account statement through the United States Postal Service might be considered a violation of this standard for customers that opt-out if the financial institution’s name, logo, or even return address appears on the outside of the statement. Another example illustrates potential unintended consequences from this definition. Similarly, this definition of “nonpublic personal information” might be considered to prevent a financial institution from informing a widower with information about the existence of an account opened by a deceased spouse.

Section 4 Initial Notice to Consumers of Policies and Practices Required

The Roundtable agrees that customers will benefit from clear and conspicuous notice of the institution’s policies and practices on disclosing nonpublic personal information of customers and former customers to affiliates and nonaffiliates. However, the Roundtable offers several suggestions to ensure that consumers fully benefit from the proposed regulations.

When Initial Notice is Required The Roundtable suggests that Section 4(a)(1) of the proposed regulations requiring initial disclosure of privacy notices “...*prior to* the time that the bank establishes a customer relationship...” (italics added) be revised to mirror the language in Section 503 of the financial modernization act, which requires that customers be provided the notice “[a]t the time of establishing a customer relationship with a consumer...” (italics added). This change will not affect the requirements that institutions cannot and will not share nonpublic personal information with nonaffiliated third parties prior to providing them with the initial notice. The Roundtable believes that this change is consistent with the narrative issued with the regulations that “the notices may be provided at the same time a financial institution is required to give other notices...” and that “this approach [will] strike a balance between (1) ensuring that consumers will receive privacy notices at a meaningful point along the continuum of ‘establishing a customer relationship’; and (2) minimizing unnecessary burdens on financial institutions that may result if a financial institution is required to provide a consumer with a series of notices at different times in a transaction. Nothing in the proposed rules is intended to discourage a financial institution from providing an individual with a privacy notice at an earlier point in the relationship if the institution wishes to do so in order to make it easier for the individual to compare its privacy policies and practices with those of other institutions in advance of conducting transactions.” The

Roundtable believes that this change would minimize unnecessary burdens and confusion that would otherwise result from receiving a series of multiple disclosures at different times during a transaction.

Exceptions to Allow Subsequent Delivery Additionally, the Roundtable supports the provision that allows institutions to provide written notice within a reasonable time frame with the agreement of both parties after the customer and the financial institution agree orally to establish a customer relationship. However, the Roundtable is concerned with the example given in Section __.4(d)(2)(i) that suggests a notice must be provided in situations where “[t]he bank purchases a loan or assumes a deposit liability from another financial institution and the customers of that loan or deposit account does not have a choice about the bank’s purchase assumption.” In many cases, requiring a notice will be outside of the scope of the legislation since the purchaser of loans often will not have a customer relationship with the borrower. In such cases, the purchaser of the loan is provided little information about, and has little direct contact, with the borrower. For example, if a loan is sold but the servicing rights are retained by the originating institution, the customer will likely have no contact with the purchaser of the loan. The Real Estate Settlement Procedures Act recognize this fact by requiring that a transfer notice only be provided if servicing rights are transferred.

In a related point, the Roundtable disagrees with the statement in the narrative addressing the definition of customer relationship in Section __.3(i). The last sentence of this definition states that “... the person will be a customer of both the institution that sold the loan and the institution that bought it.” As stated above, the Roundtable believes that the purchaser of a loan that does not also purchase the servicing rights should not be included as having created a “customer relationship.”

The agencies specifically ask for other examples of when subsequent delivery of the privacy notice is appropriate. The Roundtable believes that most student loans fall within this category. Many loans issued under the Federal Family Education Loan Program are originated with no in-person communication between the student borrower and lender. In such cases, it is possible that the lender could establish a “customer relationship” and actually disburse funds to the borrower before it is possible to provide the privacy notice. The Roundtable encourages the agencies to provide sufficient flexibility to allow subsequent notice for student loans and other financial products and services that are characterized by no prior communication between the customer and the financial institution.

The Roundtable also believes that in the case of purchasing an insurance policy, institutions should be allowed to provide the privacy notice to the policyholder when the insurance policy is delivered. This will benefit policyholders by ensuring that they are provided the notice at the time the actual customer relationship is established.

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More Than One Party to an Account The Roundtable believes that in circumstances where there is more than one party to an account, the institution should have the flexibility to provide an initial notice to any of the parties on the account. This standard is consistent with Section 230.3(d) of Regulation DD implementing the Truth-in-Savings Act, which states “[i]f an account is held by more than one consumer, disclosures may be made to any one of the consumers.” It is also consistent with Section 205.4(d)(2) of Regulation E implementing the Electronic Funds Transfer Act, which states “[f]or joint accounts held by two or more consumers, a financial institution need provide only one set of the required disclosures and may provide them to any of the account holders.”

Retention and Accessibility of Initial Notice for Customers The Roundtable is confused by the narrative describing permissible approaches for electronic delivery of notices and is concerned that the requirements may not provide appropriate flexibility for delivery of such notices. In the sentence that reads “[e]lectronic delivery generally should be in the form of electronic mail...” the agencies seem to require that privacy notices be delivered to consumers through electronic mail. However, the prior and subsequent sentences suggest that posting a privacy notice on a website may be appropriate. The Roundtable believes requiring delivery of privacy notices only through electronic mail would not benefit consumers. As the agencies appear to suggest, a web-based privacy notice may be more appropriate and meaningful in situations where on-line transactions are being conducted. Additionally, the Roundtable notes that existing technological standards allow for greater security in web-based transactions than e-mail based transactions. Given the greater level of security, it seems only appropriate that institutions be allowed to post privacy notices on their website. In order to ensure that such notices are accessed by consumers, the Roundtable suggests that institutions offer an on-line acknowledgment of receipt of the privacy notice in appropriate circumstances.

ATM Example The agencies provide an example in Section __.4(d)(5)(i)(D) that suggests that institutions should “post their [privacy] notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.” The Roundtable appreciates the intent of this example but believes it would be technologically difficult to accomplish this requirement, particularly if the privacy notices are lengthy and complex. The Roundtable asks that the agencies delete this example, or at least provide more thorough guidance on when this would be required and how it could be accomplished.

Notice to Customers Who Request Not to Receive Notices The agencies ask for comment on whether institutions should be required to send notices to customers who specifically ask that no such notices be provided. The Roundtable believes that institutions should not be required to provide customers notices in such situations. This approach would be consistent with the purposes of the financial modernization act and the proposed regulation, which seek

to allow customers greater control over communications between a customer and their financial institution.

Section .5 Annual Notice to Customers Required

The Roundtable generally supports the provisions of the proposed regulation governing annual notice to customers. The Roundtable proposes several changes to benefit customers of our member companies.

Annual Notice The proposed rules would require institutions to provide annual notices within twelve months of establishing a customer relationship. The Roundtable believes that this should be changed to allow institutions the flexibility to provide annual notices every *calender year* following the year that the initial notice is provided. This will give institutions sufficient flexibility to provide the notices to all customers at one time. If this change is not adopted, institutions may not be able to send out privacy notices at the same time of other annual mailings.

Termination of Customer Relationship The Roundtable agrees with the agencies that certain customer relationships “do not present a clear event after which there is no longer a customer relationship.” However, the Roundtable disagrees with the proposed rule requiring that notices continue to be delivered until twelve months have passed with no communication between the institution and the customer. This requirement may cause confusion in situations where the consumer does not believe that an ongoing customer relationship exists. Additionally, the Roundtable is concerned that certain communications between a financial institution and a consumer may not suggest an ongoing account relationship. For example, an institution may be required to provide a customer with a 1099 form even after the account relationship has been terminated. However, providing such a form does not necessarily suggest that an account relationship is ongoing. Additionally, while the Roundtable would not consider obtaining a stock quote from a website to constitute “communication” between a financial institution and a consumer, it is unclear how such a transaction would be treated under the proposed regulations. Due to the wide variety and unique nature of communications between a financial institution and a consumer, the Roundtable suggests that the applicable standard for determining whether a customer relationship has been terminated should be each institutions own internal policies.

Inactive Accounts The agencies specifically invite comment on the applicable standard in the case of dormant accounts. The Roundtable suggests the agencies substitute the term “inactive” for “dormant.” The term dormant suggests certain and varying legal requirements, while the term “inactive” more accurately reflects the concept of an account relationship that is no longer ongoing. In either case, the Roundtable suggests that the applicable standard should be each financial institution’s policies in this area. This will ensure that annual privacy notices are provided in a manner consistent with other periodic notices and mailings

for active accounts and will reduce confusion for consumers by ensuring that annual notices reflect the ongoing nature of account relationships.

Credit Card Example In Section __.5(c)(2)(iii) the agencies propose that a customer relationship should be considered to be terminated if “[i]n the case of a credit card relationship or other open-end credit relationship, the bank no longer provides any statements *or notices* to the consumer concerning that relationship...” (italics added). The Roundtable is concerned that the term “or notices” could include communications that are not evidence of an ongoing account relationship such as collection notices. Eliminating “or notices” from this definition would maintain the intent of this example without excluding communications such as statements that accurately indicate an ongoing account relationship.

Section .6 Information to Be Included Initial and Annual Notices of Privacy Policies and Practices

The Roundtable generally supports the provisions governing information to be included in initial and annual notices to customers. The Roundtable proposes several changes to benefit consumers of financial products and services.

Categories of Nonpublic Personal Information that the Bank Collects The Roundtable agrees with the agencies that an institution should be considered to have adequately categorized information if it groups it according to its source. However, the Roundtable is concerned that the language of the proposed regulations will result in overly detailed, extensive disclosures. Consumers may not bother to read or be able to fully understand disclosures that are not “user-friendly.” Additionally, overly detailed disclosure requirements could force institutions to re-provide notices every time a technical change occurs in an institution’s data collection, management or processing procedures. Accordingly, the Roundtable suggests that there might be other ways to categorize this information in an equal or perhaps more meaningful manner for consumers.

For example, an approach that should be considered by the agencies is to allow disclosure of categories describing the content of information. This approach may provide consumers with a more easily understandable format to enable better understanding of bank information collection practices. Accordingly, the Roundtable suggests that institutions have the flexibility to disclose categories of information collected by type of source, by type of content, or by a combination thereof, to ensure that each institution is able to provide notices in a manner that they believe is most usable for their customers.

Categories of Nonpublic Personal Information that the Bank Discloses Consistent with the comments described above, the Roundtable believes that institutions should have the flexibility to provide customers with meaningful notices on the categories of nonpublic personal financial information they disclose. Accordingly, financial institutions should be

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able to categorize such information by type of content as well as by type of source. Again, this will benefit customers by allowing financial institutions to develop disclosures that are more meaningful to consumers.

The Roundtable agrees with the agencies that “if an institution does not disclose, and does not intend to disclose, nonpublic personal information to affiliates or nonaffiliated third parties, its initial and annual notices may simply state this fact without further elaboration about categories of information disclosed.”

Categories of Nonaffiliated Third Parties to Whom the Bank Discloses The Roundtable also encourages the regulators to allow institutions to disclose categories of nonaffiliated third parties to which the bank shares information by the type(s) of products offered by third parties as well as by the “types of businesses” or a combination of both. This flexibility will allow institutions to more accurately explain to their customers the types of companies with which the institution is sharing data. This will result in the disclosures being more meaningful to consumers.

The agencies propose that a financial institution that shares information with an unaffiliated third party under the exceptions provided in Section 502(e) of the financial modernization act should be allowed simply to disclose that “it makes disclosures to other nonaffiliated third parties as permitted by law.” The Roundtable agrees with this proposed provision. Consumers benefit from simple, straightforward and clear disclosures. A potential alternative that would require institutions to list each of the appropriate exceptions under which a financial institutions shares information with nonaffiliated third parties would not be meaningful or helpful to consumers.

Right to Opt-Out The agencies propose that institutions must provide customers with “[a]n explanation of the right under Section __.8(a) of the consumer to opt-out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise the right.” While the Roundtable certainly agrees that financial institutions must disclose this information to consumers, the Roundtable believes that the notice required by Section 503 of the financial modernization act and this section of the proposed rules should not duplicate the requirements of notice of opt-out that are required under Section 502 of the financial modernization act and under Section __.8 of the proposed rules. Requiring the same information within the separate statements will unnecessarily complicate this already lengthy statement, without providing consumers with additional benefits.

Confidentiality, Security and Integrity The Roundtable disagrees that regulations governing initial and annual privacy notices should address the “integrity” of consumer nonpublic personal financial information. The Roundtable believes that the term “integrity” addresses reliability of data. Section 503(b)(3) of the financial modernization act only requires the

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notice to include “the policies that the institution maintains to protect the *confidentiality and security* of nonpublic personal information in accordance with Section 501” (*italics added*). Requiring institutions to disclose practices regarding information integrity may cause confusion among consumers since the financial modernization act does not impose requirements on institutions concerning the integrity of customer data.

Section .7 Limitation on Disclosure of Nonpublic Personal Information About Consumers to Nonaffiliated Third Parties.

The Roundtable generally supports the proposed provisions governing information to be included in initial and annual notices to customers. The Roundtable proposes several changes to benefit consumers of financial products and services.

Conditions for Disclosure The agencies ask for comment on how the opt-out “should apply in the case of joint accounts.” As described above in response to Section __.4 Initial Notice to Consumers of Policies and Practices Required, the Roundtable suggests that institutions have the flexibility to provide the initial notice to any of the parties to the account. Likewise, the Roundtable believes that each institution should have the flexibility to apply the opt-out to joint accounts as it sees fit. The unique circumstances concerning different products, services and customer relationships makes applying a general rule to a variety of situations unworkable. For example, in the case of a joint account owned by a parent and a toddler, it does not make sense to require that the child exercise his or her “opt-out” rights under the financial modernization act. Often, the owner of the account might not wish to inform the beneficiaries of their status regarding the account. Requiring a financial institution to contact those individuals or to require an opt-out would be counter to the interests of the account holder and counter to the intent of the regulations to promote confidentiality of customer financial information.

The agencies indicate that 30 days is an appropriate response period for notices provide by mail. The Roundtable agrees that a 30 day opt-out period is appropriate. However, the Roundtable asks the agencies clarify that the notice and opt-out opportunity can be provided at any time prior to sharing information, so long as customers are provided a reasonable period of time to respond.

Further, the Roundtable asks that an additional example be provided to address situations where institutions provide a toll free telephone number for customer opt-outs. A similar thirty day opt-out period also would be appropriate for this situation.

Isolated Transactions The Roundtable suggests the agencies revise their example to clarify than an institution may provide the opportunity to opt-out of information sharing at any time after completion of an isolated transaction but before sharing the customers’ information with an unaffiliated third party. Requiring an opt-out prior to the isolated

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transaction will unduly burden and confuse customers. Additionally, this change is consistent with the requirements of the Section 502(b)(1)(B) of the financial modernization act that “the consumer is given the opportunity, before the time that such information is initially disclosed, to direct that such information not be disclosed to such third party.”

Partial Opt-Out The Roundtable agrees with the agencies that financial institutions should have the option of allowing customers “to select certain nonpublic personal [financial] information or certain nonaffiliated third parties with respect to which the consumer wishes to opt-out.”

Opt-Out for Existing Customers The proposed rules allow a customer to opt-out of having their information shared at any time. The Roundtable asks that agencies provide a reasonable time period of thirty days to comply with such requests. This will allow institutions appropriate time to ensure that customer requests are honored.

Section .8 Form and Method of Providing Opt-Out Notice to Customers

The Roundtable generally supports the provisions governing the form and method of providing opt-out notices to customers. The Roundtable proposes several clarifications to this section.

How to Provide Opt-Out Notice- Delivery of Notice The agencies propose to require that institutions provide an opt-out notice within a reasonable time period in situations where the institution and the customer orally agree to establish a customer relationship. The Roundtable suggests that this requirement be clarified to allow institutions to provide an opt-out at any time prior to sharing nonpublic personal financial information with nonaffiliated third parties, with a reasonable time period for customers to respond. This will ensure that consumers’ rights in this area are preserved but will not promote confusion in situations where an institution does not plan immediately to share nonpublic personal financial information with nonaffiliated third parties.

Notice of Change in Terms The Roundtable agrees with the intent of the agencies to require that institutions provide consumers with a revised policy and opt-out if the institution changes its disclosure policies. However, the Roundtable suggests the agencies change the language in Section __.8(c) to reflect the concept of materiality. The Roundtable believes that the disclosure requirements put forth by the agencies will require detailed and comprehensive disclosures. This section seems to suggest that any time that a financial institution makes a technical change to its information sharing practices, even if there will be no material effect on the customer, the institution may be required to send out a new notice. Requiring financial institutions to frequently resend privacy notices if there is no *material* change in the institution’s disclosure policies will only serve to confuse customers while providing little or no benefit.

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Duration of Consumer's Opt Out The Roundtable agrees with the agencies that if a customer opts-out of sharing information for an individual product or group of products, an opt-out should be effective until it is revoked by the customer. However, the Roundtable believes that in situations where the customer relationship is terminated, the institution should not be required to carry over the opt-out when a new customer relationship is formed with the former customer. This is particularly true when the customer terminates all relationships with the institution. For example, if a customer closes a brokerage account and reopens a new account several months or years later, the institutions should not be required to track and comply with the prior opt-out. Another example involves a purchase of a certificate of deposit. It is not uncommon to use the proceeds from the maturity of one CD to purchase a new CD. At the time of establishing the new relationship, each institution should have the option of considering the opt-out to have terminated along with the customer relationship. Institutions that practice this policy should of course be required to offer their customer a new opportunity to opt-out when a new customer relationship is established. The operational and system problems with carrying the opt-out into perpetuity after a customer relationship has been terminated would create system problems that would be difficult to resolve. This approach is consistent with the requirements of the financial modernization act.

In a related point, the Roundtable believes that the regulations should clarify that institutions should not be required to provide a new initial notice and opt-out when an existing customer establishes a new type of customer relationship. The narrative accompanying this section supports this view but the text of the proposed regulations do not include a specific provision on this issue. The Roundtable notes that all customers will continue to have the authority to opt-out of having their information disclosed at any point.

Section .9 Exception to Opt Out Requirements for Service Providers and Joint Marketing

The Roundtable generally supports the provisions governing the exceptions to opt out requirements for service providers and joint marketing agreements. The Roundtable proposes several changes to benefit consumers of financial products and services.

Clarify "Full Disclosure" Provisions The Roundtable strongly advocates that the agencies include a provision clarifying that the statutory requirements for "full disclosure" included in Section 502(b)(2) of the financial modernization act only applies to joint marketing agreements and does not apply to agents, processors and service providers. Section 502(e) and Section 502(b)(2) itself clearly indicate that servicing activities are exempt from the opt-out requirements. Additionally, the Roundtable believes the disclosure requirements should also be exempted from this section. If agents, processors or service providers are included within the scope of the full disclosure requirements, financial institutions would be required to issue additional disclosures every time service contracts are adjusted. Requiring disclosures

as a result of contractual agreements with such entities would only cause confusion among consumers who do not understand or care about the intricacies of processing financial products and services but who fully expect and understand that their personal information must be provided to processors for their transaction to be effected. Additionally, since sharing information with agents, processors and service providers are exempt from the opt-out provisions of this bill, requiring disclosure in this area will cause further confusion among consumers.

Financial Institutions as Agents, Processors and Service Providers The Roundtable requests that the agencies clarify that in situations where a financial institution acts as an agent, processor or service provider to another financial institution, the servicing institution should be treated as a service provider for the purposes of this regulation. In such cases, the financial institution fulfilling the service provider role is contractually subject to similar terms and conditions as applicable non financial institution service providers. For example, most service providers, including financial institutions providing services to other financial institutions, are contractually prevented from using customer data for the benefit of the service provider.

Credit Scoring Vendors The agencies ask for comments on whether or not Section __.9(a)(2)(ii) of the proposed rules apply to third party vendors that use information without the indicators of personal identity to evaluate borrower credit worthiness. The Roundtable supports adding provisions to expressly permit including credit scoring vendors within the scope of this section.

Additional Requirements on Joint Marketing Agreements The agencies ask for comment as to whether or not additional requirements are necessary to govern the disclosure of information to third-party processors. In particular, the agencies note legal and reputation risks that an institution might subject itself to under such agreements. The Roundtable believes that additional requirements are not necessary. Rather, the Roundtable suggests that it is the responsibility of each institution's management to ensure that appropriate legal and reputational risk issues are addressed by the financial institution. In the event an institution does not adequately address such risks, the agencies should use general supervisory authority to effect appropriate change.

Types of Joint Marketing Agreements Covered The agencies ask for comments on whether they should include examples of the type of joint agreements covered by the regulation. Due to the wide variety and unique nature of each joint marketing agreement, the Roundtable believes that such examples would necessarily be limiting and therefore encourages the agencies not to issue further regulatory guidance in this area.

Section .10 Exception to Notice and Opt-Out Requirements for Processing and Servicing Transactions.

The Roundtable generally supports the provisions governing exceptions to notice and opt-out requirements for processing and servicing transactions. The Roundtable proposes several clarifications to this section.

Exceptions for Processing Sections 502(e)(1)(a) and 502(e)(1)(b) of the financial modernization act provide exceptions “...*in connection with* (A) servicing or processing a financial product or service requested or authorized by the consumer; [and] (B) maintaining or servicing the consumer’s account with the financial institution, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity...” (*italics added*). The Roundtable suggests that Sections __.10(a)(2), (3) and (4) of the proposed regulations be revised to reflect the “in connection with” language included in the statute.

Financial Institutions as Agents, Processors and Service Providers In its comments on Section __.9, the Roundtable requested that the agencies clarify that where a financial institution acts as an agent, processor or service provider to another financial institution, the servicing institution should be treated as a service provider for the purposes of this regulation. The Roundtable believes that the same standard should apply in Section __.10. As described earlier, a financial institution that acts as a service provider is subject to similar contractual terms and conditions as a non financial institution service provider. Also, as with “independent” service providers, financial institutions that provide services to other financial institutions are usually contractually prevented from using customer data for the benefit of the service provider.

Co-Branding and Affinity Products and Programs The Roundtable encourages the agencies to make clear that sharing information with co-brand or affinity partners is not subject to the opt-out provisions of the bill. Rather, consistent with Section __.10(a)(1), consumers who acquire such products or services are, by their nature, authorizing their institution to share information to the extent necessary to provide the benefits of such products or services. Additionally, the agencies should clarify that if a consumer insists on opting-out of information sharing for such products at a later time, the financial institution should have the right to terminate the customer relationship or move the customer into another account. This is fully appropriate since information sharing is an inherent feature of affinity and co-brand programs.

Loan Servicing The Roundtable believes that a new Section __.10(b)(2)(vii) should be added to clarify that disclosing information to a third party processor is “required, or is a usual, appropriate or acceptable method” for loan servicing.

Section .11 Other Exceptions to Notice and Opt-Out Requirements

The Roundtable generally supports the provisions governing other exceptions to notice and opt-out requirements. The Roundtable proposes several changes to benefit consumers of financial products and services.

Exceptions to Opt-Out Requirements In Section __.11(a)(1) of the proposed rules, the agencies suggest allowing financial institutions to disclose nonpublic personal information “provided that the customer has not revoked the consent or direction” to allow such disclosure. The Roundtable suggests the language be changed to the following: “provided that the financial institution does not have notice that consumer has revoked the consent or direction.” This change is intended to clarify that there may be circumstances where the consumer has given the initial consent to share information with a third party, such as an on-line aggregator, and then revoked subsequently revoked the consent but did not directly inform the financial institution. The Roundtable believes that this change will not affect the substance of the requirement.

Properly Authorized Civil, Criminal or Regulatory Investigations The Roundtable agrees with the intent of allowing the exception proposed in Section __.11(a)(7)(ii) that would allow institutions “to comply with a *properly authorized* civil, criminal or regulatory investigation, or a subpoena or summons by Federal, State or local authorities” (*italics added*). However, the Roundtable opposes the use of the term “properly authorized.” Institutions rarely have the ability or resources to identify whether an investigation, subpoena or summons is properly authorized, nor should financial institutions be called upon to serve as a watchdog for such activities. Accordingly, the Roundtable urges the regulators to remove the term “properly authorized” from the regulation.

Safeguards The Roundtable strongly suggests that no additional consent requirements be put into the regulations because of the difficulty in crafting requirements to address every possible situation. Often, the unique characteristics of each transaction will dictate the appropriate form of consent. For example, in situations where a consumer and a representative of a financial institution are communicating over the telephone, an oral consent may be appropriate. Conversely, in a situation where a transaction is completed electronically, a different form of consent would be appropriate.

Section .12 Limits on Redisdisclosure and Reuse of Information

The Roundtable generally supports the provisions governing the limits on redisdisclosure and reuse of information. The Roundtable proposes the following clarifications to benefit consumers of financial products and services.

Reuse and Redisclosure The Roundtable believes that nonaffiliated third parties that receive nonpublic personal information about consumers should be subject to the same limits and restrictions that govern the financial institution that initially collected the information. Accordingly, the Roundtable suggests that the agencies clarify their regulations to ensure that nonaffiliated third parties can avail themselves of the statutory exceptions implemented by Sections __.9, __.10 and __.11 of the proposed regulations. This clarification will benefit customers by ensuring that institutions are able to process customer transactions in a timely manner, administer customer claims, accrue bonuses to customer accounts, and otherwise effect and complete customer transactions.

The agencies request comment on whether a financial institution should “develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information.” Section 502(c) of the financial modernization act makes it clear that nonaffiliated third parties are covered within the scope of the act and are subject to limitations similar to the financial institutions. Since the obligation to comply with the privacy provisions in Title V is separate from the obligations of financial institutions in this area, the Roundtable does not believe it is appropriate to require financial institutions “to ensure” third party compliance. Rather, the Roundtable believes that compliance by nonaffiliated third parties should be subject to FTC jurisdiction and oversight.

Section .13 Limits on Sharing of Account Numbers for Marketing Purposes

The Roundtable submits the following comments on limits on sharing of account numbers for marketing purposes to benefit consumers of financial products and services.

Exceptions The Roundtable believes that the Statement of Managers referenced in the narrative accompanying the proposed rules allows the agencies to create appropriate regulatory exceptions to the limitation on sharing account numbers for marketing purposes. The agencies ask for specific comment on: 1) the effect of a strict prohibition regarding sharing account numbers with service providers; 2) customer consent to disclosure of account numbers; and 3) disclosure of encrypted numbers. The Roundtable supports limited exceptions to ensure that the confidentiality of customer information is maintained without restricting customers from receiving a high level of service from their financial institution.

First, the Roundtable suggests that customers should be allowed to permit their financial institution to share their “account number or similar form of access number or access code” with nonaffiliated marketers if it is authorized by a customer. This approach would allow customers to evaluate the benefits from having account numbers shared and would allow those that perceive benefits from such action to allow their financial institution to act on their behalf.

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The Roundtable requests clarification to ensure that institutions may provide account numbers or similar form of access numbers or access codes to nonaffiliated third party marketers in encrypted form without consent so long as the financial institution does not provide the third party with the "key" to decrypt the information. Once the customer agrees, the institutions should be allowed to provide the third party with the key to decrypt the information. Such an approach is consistent with the purposes of the financial modernization act by strictly maintaining the confidentiality of customer account numbers. However, by sharing encrypted account numbers, many financial institutions will be able to more effectively serve customer needs and demands for products marketed by the third party.

The proposed rule should clarify that the term "account numbers or similar form of access numbers or access codes" does not include customer "identification numbers" assigned by financial institutions so long as the identification number cannot be used by the nonaffiliated third party marketer to post a debit against an account the customer has with their financial institution. Such identification numbers are often used by financial institutions to identify customers in a unique and standardized format but are not used to directly post transactions to customer accounts.

The financial modernization act and proposed regulations specify that the limitation on the sharing of account number information for marketing purposes applies to an "account number or similar form of access number or access code for a credit card account, deposit account, or transaction account." The Roundtable urges the regulators to clarify that these terms do not apply to mortgage loans, installment loans, insurance policies or other forms of account relationships where a nonaffiliated third party marketer cannot post a charge or debit against the account. The prohibition on sharing account numbers with third parties is intended to ensure that third party marketers cannot use this information to directly charge customers for products and services. Since mortgage, insurance policy and other non transaction numbers cannot be used for this purpose, it is appropriate to clarify that these identifiers are not covered by this prohibition. Additionally, it should be noted that in many jurisdictions, mortgage numbers are included on publicly available documents. Including such numbers in the prohibition opens financial institutions to confusing and potentially contradictory regulatory requirements.

Effective Date These complex regulations are requiring Roundtable member companies to assess all financial products and services being offered to consumers. On addition, to implement these regulations effectively, many systems need to be adjusted. There the Roundtable suggests a phased-in implementation period. Accordingly, the Roundtable suggests that the agencies follow the precedent of the Fair Credit Reporting Act. Under such an approach, compliance with the final regulations would be voluntary on November 12, 2000 and institutions would be allowed time subsequently for final compliance. The Roundtable suggests a final compliance date of August 12, 2001.

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There are many reasons for allowing a voluntary compliance period. Requiring every financial institution to meet the November 2000 final compliance date for notice to existing customers would result in an overwhelming barrage of privacy policies and "opt-outs" being sent to consumers at the same time holiday mail is received. Additionally, the early part of the new year is busy for consumers who also receive tax and related mailings at this time.

According to a recent informal survey of Roundtable member companies, the regulations may require the largest financial institutions to mail over **25 million** separate notifications, while mid-size companies may mail approximately 1 million. From another perspective, it is estimated that every American household has relationships with 6.2 different financial institutions. If every institution mails out only one notice per household, the total number of notifications to be sent out will exceed **600 million**. Additionally, it is estimated that a person has an average of 7.5 accounts. If systems could not be reprogrammed to ensure institutions only send one notice per household, the number of notices to be sent out could eventually number in the billions. Once systems requirements are more fully considered and some of the regulatory notification requirements, such as for joint accounts, are resolved, more exact figures should become available.

To lessen this burden on consumers, many of our member companies plan to stagger their mailings of the privacy notices over a few months. Staggered mailings will likely only be possible with a phase-in period of sufficient length. Consumers would benefit other ways as well. For example, the phase-in approach would allow additional time for financial institutions to incorporate state regulatory requirements implementing the federal financial modernization act into their privacy notices. The Roundtable is concerned that each state's notice requirements differ from federal requirements, many institutions will be forced to re-mail to a potentially significant number of customers. This would cause further confusion among customers who are could receive multiple notices from their financial services providers.

The Roundtable also notes the tremendous system resources that will be required to comply with this proposed regulation. Not only will institutions have to reprogram their own internal systems to comply with this regulations, they also must work with third party vendors and partners to ensure interoperability with their systems. For example, every car dealership through which an institution offers indirect auto loans must reprogram their systems to comply with the new law and the financial institution must ensure that the changes are compatible with their own systems. The same process for ensuring interoperability holds true for institutions that purchase loans from mortgage brokers, which use third party annuity providers or otherwise rely on third party processors. All of this must be accomplished at a time when system resources are already strained by a backlog of upgrades that had been postponed while institutions prepared for Year 2000 challenges.

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The Roundtable also recognizes that the new regulations will require extensive training of personnel to promote proper compliance. In the past, larger institutions have needed up to 18 months to train employees to comply with extensive regulatory changes. The complex requirements of this regulation suggest that training for these changes will require a similar commitment of resources.

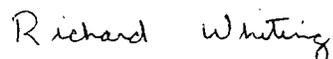
Additionally, financial regulators may use this additional time to develop model notices to clarify requirements for financial institutions. Such guidance would help provide a degree of consistency in notices that would benefit consumers.

The Roundtable asks the agencies to consider allowing further public comment on the regulations once the comments submitted in response to this notice of proposed rulemaking are considered. The Roundtable suggests that the next version of the regulations take the form of interim final rules, and provide an additional ninety day comment period to allow interested parties to provide the agencies with further feedback on the new regulations. This process to solicit further comments is appropriate given the importance of these rules to consumers and providers of financial services.

CONCLUSIONS

The Roundtable believes that the agencies have done a commendable job of drafting proposed implementing regulations for Title V of the Gramm-Leach-Bliley Act and thanks the agencies for consideration of our comments. If the Roundtable or any of our member companies can be of further assistance, please do not hesitate to contact me or Roundtable President Steve Bartlett at (202) 289-4322.

Sincerely,



Richard M. Whiting
Executive Director and
General Counsel

cc: Conference of State Bank Supervisors
National Association of Insurance Commissioners
National Association of Attorneys General
National American Securities Administrators